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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

S.C. SUPREME COURT

On Petition of _____
On Petition of Writ of Certiorari to Orangeburg County
Court of Common Pleas
The Honorable J. Edgar Dickson, Post-Conviction Relief Judge

Appellate Case No. 2020-001036

HAMZEH HAMDI SAADEH, #274236,

Respondent,

vs.

STATE OF SOUTH CAROLINA,

Petitioner.

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED FOR CERTIORARI

Did the post-conviction relief court erroneously grant relief to Saadeh based on newly discovered evidence, where the post-conviction relief court applied the strong standard for newly discovered evidence following a guilty plea, Saadeh failed to present anything other than sheer speculation as to the possible results of enhanced testing methods that came about after his guilty pleas, and the interest of justice does not require the vacation of his numerous guilty pleas?

STATEMENT OF THE CASE

On May 6, 2017, Saadeh was arrested and charged with Simple Possession of Marijuana on ticket number 67492HA. On August 8, 2017, Saadeh was represented by North Charleston Public Defender, Bob Haley. Saadeh pled guilty to a reduced charge of Possession of Drug Paraphernalia and was sentenced to a fine.

On October 5, 2017, Saadeh was given a courtesy summons for Simple Possession of Marijuana on ticket number 4102P0160776. On October 23, 2017, Saadeh received deferred prosecution until January 23, 2018. Saadeh was not represented by counsel. Saadeh did not successfully complete the terms of the deferral of the prosecution and the case was referred to the court for a court date of February 21, 2018. Saadeh received the summons and appeared in court wherein he pled guilty and was sentenced to a fine.

On February 7, 2018, Saadeh was arrested and charged with Simple Possession of Marijuana on ticket number 69584HA. On February 21, 2018, Saadeh did not appear in court and was found guilty in his absence. Saadeh was sentenced to a fine.

On June 5, 2019, Saadeh filed an initial application for post-conviction relief in the court of disposition, the City of North Charleston Municipal Court. On June 7, 2019, the Chief Municipal Judge advised there would be no further action taken on the tickets, he would not hold a PCR hearing, and advised to file for post-conviction relief with the circuit court. On June 12, 2019, Saadeh filed his application for post-conviction relief with the circuit court.

Saadeh claims his convictions and sentences were unconstitutional for the following reasons: 1. At no time did the State provide evidence to the court that the alleged marijuana contained THC greater than .3% dry weight basis; 2. At no time was Saadeh informed that an element the State needed to prove was that the alleged marijuana had to contain THC greater than

.3% dry weight basis; 3. At no time was the State able to analyze the marijuana for a percentage of THC dry weight basis; 4. Saadeh was not given Faretta Warnings prior to pleading. The PCR court granted relief based on the argument presented by Saadeh that the State's testing done at the time of the convictions could not determine the marijuana contained THC greater than .3% dry weight basis. A hearing on the matter was held in Charleston County on January 23, 2020. No testimony was taken at the hearing and no evidence concerning the marijuana in Saadeh's case was admitted. The Order Granting Relief was filed on April 17, 2020. Petitioner filed a Motion to Reconsider on May 1, 2020. The PCR Court issued its Order Denying Motion to Reconsider on July 20, 2020.

STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). On appellate review, courts give great deference to a post-conviction relief court's findings of fact and will uphold them if there is **any** evidence in the record to support them. Smalls, 422 S.C. at 179, 810 S.E.2d at 839-40 (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013); Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Id. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

Certiorari is warranted to review and ultimately reverse the post-conviction relief court's erroneous grant of relief to Saadeh based on newly discovered evidence, where the post-conviction relief court applied the strong standard for newly discovered evidence following a guilty plea, Saadeh failed to present anything other than sheer speculation as to the possible results of enhanced testing methods that came about after his guilty pleas, and the interest of justice does not require the vacation of his numerous guilty pleas

The Uniform Post-Conviction Relief Act states a person may institute a post-conviction relief action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the Saadeh contends there is evidence of material fact not previously presented, the post-conviction relief application must be filed within one year after the date of actual discovery of the facts by the Saadeh or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(G).

When a PCR applicant seeks relief on the basis of newly discovered evidence following a guilty plea, relief is appropriate only where the applicant presents evidence showing that (1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the "interest of justice" requires the applicant's guilty plea to be vacated. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions. In so holding, we caution that it will be the rare case indeed where the interests of justice will require that a knowing and voluntary guilty plea be vacated through post-conviction relief on the basis of newly discovered evidence, for an unconditional guilty plea involving an admission of guilt and a waiver of trial and all defenses will generally preclude any subsequent challenge to factual guilt.

Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014). The PCR court applied the newly discovered evidence standard for trials in its order granting relief, not the standard for a guilty plea. Therefore, the PCR court erred as a matter of law in its application of the incorrect standard. Applying the proper standard, Saadeh's claims are wholly without merit. Saadeh's claims do meet the first part of the test, in that the evidence was discovered since the plea, however the claims fail in that the evidence is not of such weight or quality as to warrant vacating the plea in the "interest of justice." Saadeh's newly discovered evidence is the new testing procedures SLED has enumerated concerning marijuana. Saadeh did not present any evidence that testing was done on the marijuana in his case that was improper, nor any evidence that new testing was done showing that the material was not in fact marijuana. Therefore, Saadeh has wholly failed to meet his burden warranting a grant of relief under the proper newly discovered evidence standard.

In granting post-conviction relief, the lower court adopted Saadeh's speculative assertions that he was entitled to relief based on SLED's announcement on December 14, 2018, that they were ending their marijuana testing program of microscopic analysis and Duquenois-Levine spot testing because the testing procedures could not differentiate between industrial hemp and marijuana. However, Saadeh wholly failed to present any evidence whatsoever to support this claim and instead speculated it would have impacted his cases because his convictions occurred during the time period SLED states the testing procedures were insufficient, the State could not meet its burden in proving the marijuana contained THC greater than .3% dry weight basis, and therefore the convictions were invalid

First, Saadeh has not met his burden in proving he was prejudiced as a result of the testing procedures at the time of his convictions. In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d

813 (1985). “The burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Rule 71.1(e), SCRPC. As noted above, it is Saadeh’s burden to prove his allegations and any resulting prejudice. Saadeh failed to present any evidence at all to support his claims, so the claims must fail as a matter of law. Therefore, the PCR court erred in granting relief. Saadeh’s argument that his convictions are invalid because of improper testing is erroneous where the PCR court was not presented with evidence testing was done in Saadeh’s cases and that it was in fact in error. Saadeh admitted in his application and the PCR court acknowledged in its order that there was no evidence that the testing Saadeh alleges was invalid was in fact done in his cases. Saadeh would have admitted to the facts as presented by the prosecuting officer and admitted that the material found was in fact marijuana. Saadeh could have moved to have the marijuana tested at the time of the proceeding, he failed to do so. Saadeh has failed to prove the testing done by SLED at the time, which could not differentiate between industrial hemp and marijuana, would have made any difference in the outcome of his proceedings. Further, and most significantly, Saadeh has wholly failed to prove testing was even necessary where Saadeh plead guilty to the charges as presented. By entering a guilty plea, “[a]n accused waives the right to trial and the incidents thereof and the constitutional guarantees with respect to criminal prosecutions.” Rivers v. Strickland, 264 S.C. 121, 124, 213 S.E.2d 97, 98 (1975) (citation omitted). “A plea of guilty is an admission or a confession of guilt, and [is] as conclusive as a verdict of a jury; it admits all material fact averments of the accusation, leaving no issue for the jury, except in those instances where the extent of the punishment is to be imposed or found by the jury.” State v. Fuller, 254 S.C. 260, 266, 174 S.E.2d 774, 777 (1970) (citations omitted); see North Carolina v. Alford, 400 U.S. 25, 37, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970) (noting guilty pleas constitute a waiver of trial and an express admission of guilt upon which a sentence may be imposed). Thus, “[w]hen a criminal

defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.” Rice, 401 S.C. at 332, 737 S.E.2d at 486 (quoting Tollett, 411 U.S. at 267, 93 S.Ct. 1602).

Second, Saadeh has failed to prove he was prejudiced concerning ticket number 67492HA, where Saadeh ultimately plead to Possession of Drug Paraphernalia and not Simple Possession of Marijuana. Here, the testing procedures of SLED at the time are wholly irrelevant to the charge to which Saadeh ultimately plead. The testing procedures of SLED are not relevant to the State’s case where Saadeh plead to a charge not relating to industrial hemp or marijuana. The newly-discovered evidence presented by Saadeh would not change the result of the proceeding, thus Saadeh has failed to meet his burden concerning this charge. Therefore, this Court should grant Certiorari and deny Saadeh relief.¹

CONCLUSION

For the foregoing reasons, this Court should grant this Petition for a Writ of Certiorari. Should this Court deny the petition, Petitioner seeks permission to more fully brief the issues herein.

¹The PCR court briefly mentions in the order granting relief that the Faretta warnings were not part of the record and that the plea colloquy was not part of the clerk’s records. The PCR court appears as if it might be granting relief on this ground, but then ultimately does not. The Court further stated that “the record reflected that the court does not provide Faretta warnings to Defendants proceeding without counsel, at least in every pro se case.” However, there is no mention of the Faretta issue in the Court’s conclusion and ultimate grant of relief. Petitioner, out of an abundance of caution, feels inclined to address the issue on the merits. Any relief on this ground would be an error as a matter of law. Saadeh did not have the right to counsel, as his sentence did not deprive him of his liberty. Saadeh received fines as a result of his convictions. Thus, Applicant did not have a right to counsel and therefore Faretta does not apply. Glaze v. State, 366 S.C. 271, 275, 621 S.E.2d 655, 657 (2005); Argersinger v. Hamlin, 407 U.S. 25 (1972).

Respectfully submitted,

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